JG Restaurant Ventures, LLC d/b/a Big Louie's Pizza *and* Michael Jablow. Case 12–CA–181210

October 27, 2017

DECISION AND ORDER

BY CHAIRMAN MISCIMARRA AND MEMBERS PEARCE AND KAPLAN

The General Counsel seeks a default judgment in this case on the ground that JG Restaurant Ventures, LLC d/b/a Big Louie's Pizza (the Respondent) has withdrawn its answer to the complaint. Upon a charge and amended charge filed by Michael Jablow on August 1 and September 16, 2016, respectively, the General Counsel issued a complaint on December 29, 2016, against JG Restaurant Ventures, LLC d/b/a/ Big Louie's Pizza (the Respondent), alleging that it has violated Section 8(a)(1) of the National Labor Relations Act. The Respondent filed an answer on January 10, 2017. However, by letter sent by email on July 19, 2017, the Respondent withdrew its answer to the complaint.

On August 15, 2017, the General Counsel filed with the National Labor Relations Board a Motion to Transfer Proceedings to the Board and Motion for Default Judgment. On August 18, 2017, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively states that unless an answer is received on or before January 12, 2017, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Although the Respondent timely filed an answer on January 10, 2017, it later withdrew that answer. The withdrawal of an answer has the same effect as failure to file an answer, i.e., the allegations in the complaint must be considered to be admitted as true.[1] Accordingly, based on the withdrawal of the Respondent's answer, we deem the allegations of the complaint to be admitted as true, and we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a Florida limited liability corporation with offices and places of business in the State of Florida, including an office and place of business in Hollywood, Florida (Respondent's Hollywood, Florida facility), and has been engaged in the business of operating a restaurant.

During the 12-month period preceding issuance of the complaint, in conducting its operations described above, the Respondent derived gross revenues in excess of $500,000, and purchased and received at its offices and places of business in the State of Florida goods valued in excess of $5000 directly from enterprises located outside the State of Florida, and from enterprises located within the State of Florida, each of which other enterprises had received those goods directly from points outside the State of Florida.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals have held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

George Abbondante	Manager
Angela Novanty	General Manager

The following events occurred, giving rise to this proceeding.

1. Since about February 1, 2016, the Respondent, by George Abbondante and Angela Novanty:

(a) has instructed employees not to discuss wages or other terms and conditions of employment with coworkers.

[1] See *Maislin Transport*, 274 NLRB 529 (1985). On July 12, 2017, the Respondent sent counsel for the General Counsel via email a letter stating "I will not be contesting the NLRB's allegations in the complaint filed in the Case 12–CA–181210 on December 29, 2016. I will not dispute the alleged unfair labor practices claimed against the company." See Motion, Exhs. 10, 11. On July 19, 2017, the Respondent sent counsel for the General Counsel via email a second letter explicitly stating "I am withdrawing my answer to the complaint I submitted back in January 2017. I accept liability of the allegations set forth." See Motion, Exhs. 12–13.

(b) has threatened employees with discipline or discharge if they discuss wages or other terms and conditions of employment with coworkers.

2. Since about February 1, 2016, employee Michael Jablow engaged in concerted activities with other employees for the purposes of mutual aid and protection by discussing the Respondent's change to employee wages and other terms and conditions of employment.

3. About February 2, 2016, the Respondent issued a written warning to Jablow.

4. About February 16, 2016, the Respondent discharged Jablow.

5. The Respondent engaged in the conduct described above in paragraphs 3 and 4 because Jablow engaged in the conduct described above in paragraph 2, and to discourage employees from engaging in these or other concerted activities.

6. Since at least March 16, 2016, the Respondent has maintained and enforced the following rule in its Employee Manual:

> STANDARDS OF CONDUCT
>
> [. . .]
>
> Rude or improper behavior with customers or employees including the discussion of tips and wages.

CONCLUSION OF LAW

By the conduct described above in paragraphs 1, 3, 4, and 6, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8(a)(1) of the Act. The unfair labor practices of the Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(1) of the Act by maintaining and enforcing the rule in its Employee Manual under Standards of Conduct which includes the discussion of tips and wages as rude or improper behavior, we shall order the Respondent to rescind that rule and to furnish all current employees with written notice that the rule is no longer being maintained.

Additionally, having found that the Respondent violated Section 8(a)(1) of the Act by issuing Michael Jablow a written warning and discharging him, we shall order the Respondent to offer Jablow full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed. In addition, we shall order the Respondent to make Jablow whole for any loss of earnings and other benefits suffered as a result of the unlawful actions against him. Backpay shall be computed in accordance with *F.W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). In accordance with our recent decision in *King Soopers, Inc.*, 364 NLRB No. 93 (2016), we shall also order the Respondent to compensate Jablow for his search-for-work and interim employment expenses regardless of whether those expenses exceed interim earnings.[2] Search-for-work and interim employment expenses shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.[3]

The Respondent additionally shall be ordered to remove from its files any references to the written warning issued to Jablow and his discharge and to notify him in writing that this has been done and that the unlawful actions will not be used against him in any way. We shall further order the Respondent to compensate Jablow for any adverse tax consequences of receiving a lump-sum backpay award and to file with the Regional Director of Region 12 a report allocating the backpay award to the appropriate calendar years. *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016).

ORDER

The National Labor Relations Board orders that the Respondent, JG Restaurant Ventures, LLC d/b/a Big Louie's Pizza, Hollywood, Florida, its officers, agents, successors, and assigns shall:

1. Cease and desist from

(a) Instructing employees not to discuss wages or other terms and conditions of employment with coworkers.

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[2] For the reasons stated in his separate opinion in *King Soopers*, 364 NLRB No. 93, slip op. at 9–16, Chairman Miscimarra would adhere to the Board's former approach, treating search-for-work and interim employment expenses as an offset against interim earnings. Member Kaplan expresses no judgment as to whether *King Soopers* was correctly decided. However, because it is Board law until such time as the Board revisits the issue, he applies it here for institutional reasons.

[3] The General Counsel additionally seeks a make-whole remedy that includes reasonable consequential damages incurred as a result of the Respondent's unfair labor practices. This issue, which was not briefed, would involve a change in Board law. We are not prepared at this time to deviate from our current remedial practice. Accordingly, we decline to order this relief at this time. See, e.g., *Laborers' International Union of North America, Local Union No. 91 (Council of Utility Contractors, Inc. and Various Other Employers)*, 365 NLRB No. 28, slip op. at 1 fn. 2 (2017).

(b) Threatening employees with discipline or discharge if they discuss wages or other terms and conditions of employment with coworkers.

(c) Issuing written warnings to employees because they engage in protected concerted activities, and to discourage employees from engaging in these activities.

(d) Discharging or otherwise discriminating against employees because they engaged in protected concerted activities, and to discourage other employees from engaging in these activities.

(e) Maintaining and enforcing the rule in its Employee Manual under Standards of Conduct which includes the discussion of tips and wages as rude or improper behavior.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind the rule in its Employee Manual under Standards of Conduct which includes the discussion of tips and wages as rude or improper behavior.

(b) Furnish employees with an insert for the current Employee Manual that (1) advises that the unlawful rule has been rescinded, or (2) provides a lawfully worded rule on adhesive backing that will cover the unlawful rule; or publish and distribute to employees a revised Employee Manual that (1) does not contain the unlawful rule, or (2) provides a lawfully worded rule.

(c) Within 14 days of this Order, offer Michael Jablow full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(d) Make Michael Jablow whole for any loss of earnings or benefits he may have suffered as a result of his unlawful discharge, in the manner set forth in the remedy section of this decision, plus reasonable search-for-work and interim employment expenses.

(e) Compensate Michael Jablow for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 12, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years.

(f) Within 14 days from the date of this Order, remove from its files any reference to the unlawful issuance of a warning to Michael Jablow and his discharge, and within 3 days thereafter, notify him in writing that this has been done and that the unlawful actions will not be used against him in any way.

(g) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(h) Within 14 days after service by the Region, post at its Hollywood, Florida facility, copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 12, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 1, 2016.

(i) Within 21 days after service by the Region, file with the Regional Director for Region 12 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. October 27, 2017

Philip A. Miscimarra, Chairman

Mark Gaston Pearce, Member

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Marvin E. Kaplan, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT instruct you not to discuss wages or other terms and conditions of employment with your coworkers.

WE WILL NOT threaten you with discipline or discharge if you discuss wages or other terms or conditions of employment with your coworkers.

WE WILL NOT issue written warnings to you because you engage in protected concerted activities, and to discourage you from engaging in these activities.

WE WILL NOT discharge or otherwise discriminate against you because you engage in protected concerted activities, and to discourage you from engaging in these activities.

WE WILL NOT maintain or enforce the rule in our Employee Manual under Standards of Conduct which includes the discussion of tips and wages as rude or improper behavior.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL rescind the rule in our Employee Manual under Standards of Conduct which includes the discussion of tips and wages as rude or improper behavior.

WE WILL furnish you with an insert for the current Employee Manual that (1) advises that the unlawful rule has been rescinded, or (2) provides a lawfully worded rule on adhesive backing that will cover the unlawful rule; or publish and distribute to you a revised Employee Manual that (1) does not contain the unlawful rule, or (2) provides a lawfully worded rule.

WE WILL, within 14 days from the date of the Board's Order, offer Michael Jablow full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Michael Jablow whole for any loss of earnings and other benefits suffered as a result of his unlawful discharge, less any net interim earnings, plus interest, plus reasonable search-for-work and interim employment expenses.

WE WILL compensate Michael Jablow for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file with the Regional Director for Region 12, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to our unlawful issuance of written warning to Michael Jablow and his discharge and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the unlawful actions will not be used against him in any way.

JG RESTAURANT VENTURES, LLC D/B/A BIG LOUIE'S PIZZA

The Board's decision can be found at www.nlrb.gov/case/12-CA-181210 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273–1940.